sale of goods on the black-market. Tribal leaders, or members of a "status group," in whose hands the operation of the cooperative society had been placed, confiscated more than their share of food and fodder and resold it either in the Nile Valley or to their own tribesmen for whom it had originally been intended. The government could not really prosecute the guilty parties for fear of jeopardizing the entire program. Nor could they convince the cheated tribesmen that they had been treated unfairly by their leaders. For one thing, the Bedouins did not consider that their leaders were committing a wrong; furthermore, any Bedouin who would go to the government to inform on another Bedouin would be subjected to a trial by Bedouin justice. It is still the traditional codes of Bedouin law and honor, and not the modern judiciary system, which prevail in al-Qasr.

The cooperative society in al-Qasr is one of thirteen in the general area of Marsa Matruh. It began with a membership of twenty-five, twenty-two of these were from the 'Aishaibat tribe. Today, the enrollment is 139 official, and another 195 "unofficial" members. The unofficial members represent unregistered branches of the al-Qasr cooperative. The Bedouins explain that they cannot allow any members of the tribe to go hungry, and, therefore, they will distribute food to all those who need it (Zein, n.d.). This, of course, shows that those cooperative officers who do profiteer are not entirely oblivious

Law and Political Order: 'Awaiyid Awlad 'Ali

671 [672] A "holy man" in al-Qasr, who has intimate knowledge of both the Quran and Bedouin law, has this to say on the subject of the 'awaiyid Awlad 'Ali:

671 171 The Sharii'a (Islamic Law) was given by God, and it guides man concerning what is good and what is bad: it is for all Muslims. The 'awaiyid was made by man for the Bedouins: it is for settling problems and evaluating damages. The 'awaiyid is natural, made by man and the Awlad 'Ali for settling the problems of the Bedouins. It is different from the Sharii'a. The Awlad 'Ali made the 'awaiyid, not the ashraaf ("holy men"); but the "holy men" approved it. The 'awaiyid agrees with the Sharii'a, but not in everything for it is not from the Sharii'a. Shari'it Muhammad ("the law of the Prophet") is one thing and the 'awaiyid is another. The Sharii'a says an eye for an eye, a tooth for a tooth, and a life for a life: the 'awaiyid also says an eye for an eye, a tooth for a tooth, and a life for a life, but in a different way: the 'awaiyid involves money. The 'awaiyid judges a situation; the dhabiiha ("blood sacrifice," usually a lamb as an expiatory fee) and the fine are paid and the problem is solved . . . The 'aqila is better than the government for settling problems in the desert. The government may put a man in prison, and if he dies there you will be responsible to his father and brothers. There is a more liberal judgment here in al-Qasr, and God prefers that we settle our problems through peace . . . If a man dies in prison, it is no sin before God but the Bedouins consider it a sin.

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671 At the present time, the customary law of the Awlad 'Ali prevails in al-Qasr, and, I suspect, this body of legal and moral norms will be the basis for Bedouin social and political action for some time in the future. In any case, it furnishes us with a base-line from which any future studies of social

121 external system, however, the law recognizes retaliation, a
681 life for a life. Still, even in this case, Bedouin values
682 expressed through the 'awaiyid try to avert bloodshed and
[182] feuding by showing "the good path" and providing the means
[671] for settlement through compensation.

Just as the Bedouin accepts the 'awaiyid as a set of
681 of ideals calculated to regulate conflict, he paradoxically
682 claims the right to impose retaliatory sanctions as a just
182 conclusion to conflict. One Bedouin said that the greatest
[671] sin which a man or group can commit is to accept the diiya
• [673] and then take his blood-revenge and return the money. Presumably, a person or group commits no outrage if they refuse the diiya with the understanding that blood-revenge will be taken. In al-Qasr, retaliation and the 'awaiyid are mechanisms
[626] of social control and dispute settlement. A political office
[671] exists, i.e. the 'aqila which functions over the total range
* [613] of political action, and the process of adjudication and
[692] compensation in the form of indemnity payment represents an institutionalized alternative to retaliation. In all cases of dispute, ritual or religious sanctions back up social
[776] sanctions. God is a third party to all conflict, and this is
[695] made manifest in the reading of the Fatiha or the oath-taking ceremony. In order to describe how authority and sanctions
128 operate in Bedouin society, a number of examples are presented
68 below. Some of the cases are the statements of informants about
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[114]

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[681]
[885] Each Aqila is responsible for submitting to the Amar a list of the Sayems in his bait, and this will be the basis for establishing the share of the bait in payment or receipt of the money.

Article 5:

No Aqila can act on any matter involving loss or gain to the Amar without the presence of the other Awaqil of the Amar, unless an urgent matter occurs in which waiting for the rest of the Awaqil might jeopardize the interest of the Amar. In such cases the Awaqil present can act on behalf of the Amar as a whole.

Article 6:

[672] The following acts should not involve the Amar as a whole and the offender is considered individually (or with his own Bait) responsible for them:
[673]

1. Theft and cheating.
2. Insult or disrespect of a younger member of the Amar to an older person whether from the Amar or not.
3. Entering someone's tent or home without permission.
4. Seduction of women (including rape and adultery).

[681] In all the above cases the individual has to bear the responsibility for his own actions. For to let the Amar pay for him in such circumstances is to encourage him and other such members of the Amar to commit more of such acts and bring disgrace to the Amar. If the offender is unable to pay for his crime, his nearest male kin should pay for him in accordance with the Awlad Ali Daraieb. Such payments are considered as personal debts which the offender has to pay back as soon as he is financially able.

Article 7:

[627] When an older person does injustice to a younger one, the latter should take his complaint to the Aqila of his own bait. The Aqila in turn should take the matter up with the Aqila of the older man or to all the awaqil of the Amar if the matter is serious enough. The awaqil must assess the facts and prevent the older man from doing any more injustice to the younger man and have the former compensate him for any damage he might have caused the younger man by his actions. If the awaqil fail to do this and if their failure resulted in the younger insulting or hurting the older, his acts become no longer an individual responsibility for which he has to pay alone, and the Amar should pay for him.

Article 8:

[627] No members of the Amar should take sides in disputes involving families or individuals outside the Amar unless the awaqil in the Amar investigate the matter and the reasons for the dispute and decide that the Amar as a whole should be on one side of the dispute or the other.

CHAPTER VI

HOMICIDE AND BODILY INJURIES

Part 1: Homicide

579 Fighting is quite common among Awlad Ali. Many of these fights involve a large number of individuals and result in many casualties 579 and sometimes even deaths. Fighting is considered "shar," or evil, 673 for according to Awlad Ali, it threatens the social cohesion which is 182 highly valued in the area. Yet, although undesirable, fighting and [682] even homicide are not considered a crime against society and sometimes are viewed as necessary to safeguard individual and collective rights in the absence of an established authority which could protect these [177] rights. Although this absence of an authority is remedied now by the [692] introduction of state administrative justice, this has not yet achieved enough efficiency and recognition to replace the old tribal system.

619 In the tribal system, there is no concept of individual punishment 681 inflicted upon the suspect. There is no recognized authority to inflict 692 it. The mardi or the 'aqila who performs the function of dispute settle- [529] ment in the case of homicide has no power to pass or inflict any punishment. His role is restricted to mediation between the two parties involved 682 as was earlier mentioned. Homicide, like all other wrongs among Awlad Ali, 673 are private wrongs affecting the individual or a group of individuals. [182] The main purpose of the tribal proceedings in the case of homicide is to restore some form of harmony and order among the group. This harmony is sometimes restored by killing the murderer or any member of his vengeance 682 group, or amar. Feuds may result from such killing, and a few instances 628 of feuds have, in fact, been recorded in the area (although not in the

and compensation became more and more accepted in settling murder cases among the tribal population. Bloodmoney, or diyya," was established among compensations for injury in general. This scale of compensation is based on the amount of loss of normal activities the injury caused the victim with death being the total loss of such activities. The compensation for homocide is estimated at L.E.400 for intentional killing, and L.E. 300, for unintentional killing. Although reference here is made to "intention," the assessment of that intention and its definition are quite different from the general usage of that term among modern jurists. Among modern jurists, the term refers to a state of mind which implies that the offender willfully and knowingly committed the prohibited act. This means, first, that the person is able to recognize the nature of his act and to distinguish between right and wrong. Secondly, it means that the person was in a position to choose between committing the act and not committing it and took the former path. According to this view, individuals under temporary or permanent insanity, children under the legal age (the definition of which varies from one legal system to another), non-human beings and objects are not capable of having criminal intent, since they are incapable of having a will of their own. Similarly, individuals who are capable of having a will but, because of certain circumstances their freedom of choice was impaired, cannot also have intentions. Intention, then, in the modern legal conception is a psychological quality that connects the offender with the prohibited result or results. It is this psychological connection that differentiates in modern legal systems between murder and manslaughter, between attempted murder and simple assault, between first and second degree murder, and between justifiable

682 and unjustifiable homicide. To examine responsibility in homicide
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673 among Awlad Ali and their definition of "intentional" and "non-intentional" killing, let us first present some of the cases collected from the area.

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[428] CASE #1: The Case of the Broken Rope

This is one of the classical cases which is told throughout the entire area. There is some slight variation in the way it is told, but all accounts refer to the fact that Hemeida from the 'Esheibat tribe inherited the right to use a large area of tribal land in which there was an old Roman well not used for a long period of time and which was full of sand. One day he invited the awaqil of his tribal segment, as well as his neighbors, to consult them on how to clear the well, since without it the land was almost useless. They all decided it was a good idea and offered their help. On the day the well was to be cleared, they all gathered around the well. Among those present was Do'ah, a poor member of the 'Esheibat tribe who worked as a paid shepherd for Hemeida. He was watching from a distance when Hemeida called upon him to give a hand. The well, like all Roman wells in the area, is about fifty feet deep and fifteen feet in diameter, and narrows as one goes down the well. To be cleared, someone has to be lowered by a rope to the bottom of the well to dig up the sand. Hemeida's cousin, Ali, agreed to go down, and the gathering looked for a sturdy rope which they found at one of Hemeida's neighbors. As the group was tying Ali to the rope, Hemeida suggested that Ali was too heavy for the rope and that it would be a good idea if a slimmer man did the job. At this point, everybody looked at Do'ah, since he was the thinnest

682 agreed that the sticks were not by nature lethal weapons. The
672 latter, according to the tribal law, are only guns and knives,
627 since they give the victims no chance to defend himself. They ruled the case unintentional killing for which only L.E. 300 should be paid.

682 Since Yadem and his brother were arrested by the police for
625 their crime, the payment of the bloodmoney was postponed until
692 the case was settled according to the state legal system. Only half of the bloodmoney was paid and the rest was postponed until the case was decided upon by the legal system and Yadem released.

682 This is obviously a case in which the nature of the killing was
672 decided upon by drawing upon the material aspect of criminal
673 causation. The nature of the weapon used was the major determinant
[411] of the crime. Only guns and knives are defined as lethal; all others are non-lethal by nature, although they might cause the death of the victim. Death caused by a non-lethal weapon is considered as unintentional regardless of whether or not the actor intended the results, while death by a lethal weapon, even without the intention of killing, is classified as intentional killing, as appears in the following case.

CASE #4: The Case of the Threatened Tribesman

613 For more than five years Bait El-Mawi from the Sheibat tribe
628 had been in a continuous state of feud with Bait El-Asi from the Gemeiat tribe. One night, during a Khamasein sand storm when visability was extremely low, Abd-el-Galil from Bait El-Mawi heard a noise outside his tent, and the dogs were barking indicating that a stranger was there. Being sure that someone was approaching

613 the tent and fearing that he might have been a member of the
628 feuding Bait intending to harm him or members of his family, Galil took his gun and went outside to see who was there. He called on the person to identify himself. When he got no answer, he warned him that unless he identify himself, he (Galil) would fire his gun in the air as a warning. After a short period of no
613 response, Galil fired his gun in the air. A moment later, Galil
628 heard a cry coming from the direction of a small hill at the side
682 of the tent. When Galil went there, he found Salem, a member of a neighboring camp, lying on the ground with a bullet wound in his stomach. He told Galil that his wife was sick and that he had come to borrow Galil's donkey to take her to the doctor in the nearby medical center. He had taken the short cut to Galil's tent when he was hit by the bullet which Galil had fired in the air. Galil took his wounded neighbor to the medical center, but Salem died before they reached it.

682 The Mi'ad was held, and Galil and his family had to pay L.E. 400
672 to the victim's kin group. The amount was that specified for in-
627 tentional killing, since the wound that caused the death was in-
673 flicted by a lethal weapon.

CASE #5: The Case of the Startled Shepherd

233 This case involves Idris, a poor member of the Sheresat tribal
[464] segment. He earned his living by working as a hired shepherd for
[619] 'Awwad from Bait Ibrahim in the area of Gharbaniat. During the dry
[312] season, each shepherd takes his flocks to the water wells near the coast and leaves them there for three or four hours to get their fill of drinking water. That afternoon, Idris, waiting for the

682 settlement is usually made after the parties have agreed to it,
627 yet, in certain instances where one of the parties later feels that
672 the settlement was not just or that he was coerced into accepting
695 it, he may ask for a second Mi'ad during which new procedures start
in the case. In the present case, although Mahdi had originally
accepted the judgment of the awaqil, as time passed and he real-
ized that he was unable to pay the bloodmoney, he started to ques-
682 tion the feasibility of the settlement. He discussed the matter
672 with Sheikh Suliman el-Gerery from the Murabiteen tribe of Gerera,
695 a tribe whose members are feared throughout the area for the belief
554 that they have certain supernatural powers. Sheikh Suliman himself
792 is highly respected, and people believe that after his death he will
[776] become "wali" or a saint. After hearing Mahdi's complaint, Sheikh
Suliman told him that the settlement was unjust and told him that he
would do something about it. The following Thursday, Sheikh Suliman
called on Mahdi and asked him to bring his donkey and follow him.
They rode to a small desert town called Bahig where the local market
613 is held every Thursday. On market day, the awaqil of various tribal
519 segments usually gather in front of the general store in the town
571 drinking tea and chatting until their sons or the younger members
443 of their families sell the sheep and buy the necessary items. Every-
576 one passing by the gathering is expected to greet the gathering, get-
ting off his donkey as a sign of respect to the prominent people.
[689] Failure to greet a fellow tribesman is considered a serious offense
liable to a fine of more than L. 50 and ten goats in certain cases.
[673] It is considered a very serious crime. One informant once told me,
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671 672 171 the irrelevance of intention in establishing liabilities for homocide or injuries (1954).

672 682 The neglect of intention in assessing liability in cases of homocide is evident in the cases presented above (Cases 1,2,4,5 and 6), where compensation was paid although there was no intention established on the part of the offender.

[192] Awlad Ali use the Arabic word "katl" to refer to any killing. This is different from the word "mut" which means death by natural causes. They further differentiate between "katl 'amd," or intentional killing and "katl khata," or unintentional killing. Although reference here is made to "intention," yet, from the above cases it is evident that the basis of establishing that intention is from the type of weapon used in effecting the death of the victim. Intentional killings are those caused by a lethal weapon. Lethal weapons are defined as guns or knives. Death caused by a non-lethal weapon, no matter what the intentions of the offender, is defined as non-intentional, even when the circumstances of the act indicates the actual existence of an intention on the part of the offender to cause the death of the victim (as in Case #3 above). The assumption is that the use of lethal weapons, such as daggers or guns, implies intention and possibly a certain degree of premeditation, since these weapons have no other important use. Moreover, the probability of death by a lethal weapon is much greater than from other non-lethal weapons. These give the victim a chance to defend himself, a chance which he does not have in the cases of killing with a gun or dagger. In other words, Awlad Ali, in assessing responsibility for homocide, "operate with a legalistic psychology in which intention is is presumed from action" (Gluckman, 1963:207).

682 672 673 [411]

the role of the victim in initiating the act of the offender. In the case of the adulterous wife (Case #7), the intention of the husband to kill the wife's lover was clear from the evidence; yet, the husband's kin group never attempted to take refuge, and the victim's group was eager to settle the case with the least amount of publicity. On the other hand, killing in circumstances that offend the tribal standards of chivalry, like killing from ambush or during the night, are the most difficult to solve and pose the greatest chance for retaliation.

Although the traditional amount of compensation is not determined by the actual intentions of the killer, but rather by assumed intentions as deducted from the type of weapon used in causing death, yet, the final amount paid is usually determined by such intention. The actual intention works as the basis for bargaining between the victim's kin and the kin of the killer. Kin of the victim of an intentional killing are less likely to agree to any reduction of the amount, and with the threat of retaliation or revenge present, the killer's kin are bargaining from a weaker point. This is not the case in unintentional killings or where the victim's behavior instigated the reaction of the killer. In such cases, the victim's group is more willing to accept a lesser amount of compensation, and the killer's group, while not in a good bargaining position, at least are not under the threat of revenge. And since they do not resort to the right of refuge, their daily activities are not disrupted. In this case, they could sustain the bargaining activities for a relatively longer period of time. Also, there is usually a strong pressure on the victim's group to accept reduced compensation in the case of unintentional killing from the rest of the tribal members. If

682 between the parties involved. The relative position of both the of-
672 fender and the victim and their relationship to one another is taken
627 into account. What is reasonable behavior in one case may not be so in another. Pst disputes are taken as indications of the present situation, although they may not be directly related to the present dispute.

672 It is possible to say, then, that Awlad Ali recognize two types of
673 intentions: an assumed intention deducted from certain material aspects of the act itself, like the type of weapon used in causing the death of the victim, and an actual intention which is quite similar to that utilized in modern jurisprudence in the sense that it pertains to a state of mind on the part of the offender that connects him in a special way with the prohibited results. The assumed intention works to set the initial guide for the traditional scale of bloodmoney. It sets the basis upon which compromise could be achieved. Actual intention, on the other hand, determines the actual course the specific case takes as well as the final amount of money paid as a settlement.

683 the settlement is announced. This deduction is determined by the same
683 factors involved in the case of homicide, such as the relationship be-
672 tween the parties involved and the presence or absence of an intention on the part of the offender to cause bodily harm to the victim, as well as the role the victim played in provoking the actions that led to his
683 injury. Injuries sustained during a fight are not as serious as injur-
672 ies sustained by ambushing the victim. In the latter case, the victim
673 had no chance to defend himself. Also, the number of people involved in the actions that led to the injury enter as a variable. If more than one individual attacks a victim, it is considered more serious than a man-to-man fight.